

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

CORESLAB STRUCTURES (TULSA) INC.,

Respondent,

v.

**CASES 14-CA-248354
 14-CA-248812**

INTERNATIONAL UNION OF
OPERATING ENGINEERS LOCAL 627,
AFL-CIO

Charging Party.

**CORESLAB’S MOTION TO REOPEN THE RECORD TO ADMIT OR IN
THE ALTERNATIVE TAKE ADMINISTRATIVE NOTICE OF AN
ARBITRATION AWARD**

Coreslab Structures (Tulsa) Inc., (“Respondent”) by counsel, and pursuant to Section 102.48(c)(1) of the National Labor Relations Board’s Rules and Regulations, presents the instant Motion to Reopen the Record to Admit or in the Alternative Take Administrative Notice of an Arbitration Award. In support thereof, the Respondent states as follows:

1. National Labor Relations Board Administrative Law Judge (“ALJ”), ALJ Ringler, issued his Decision in the above captioned matter on February 11, 2021.
2. On February 25, 2021, counsel’s law firm, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., was retained to represent Respondent to except to the ALJ’s decision.
3. The Respondent is filing exceptions to the ALJ’s Decision on various grounds, including an exception asserting the General Counsel did not establish by a preponderance of the evidence that the International Union of Operating Engineers, Local 627, AFL-CIO (“Union”) was unaware that Respondent’s bargaining unit employees participated either in the union-sponsored

pension plan or Employer-sponsored profit sharing plan. (Complaint, ¶ 8(a)-(h)); (Exceptions 4-27).

4. On or around April 9, 2021, Respondent's counsel discovered that Respondent and the Union were involved in an arbitration in response to a grievance filed by the Union regarding the Respondent's profit sharing plan. Respondent's counsel had no knowledge of this arbitration award prior to April 9.

5. The award lays out a series of events regarding a disagreement over the profit sharing plan as it related to negotiations over a new collective bargaining agreement.

6. After a series of negotiation meetings, the Union's president, Justin Evans, wrote to Neil Drews, Respondent's Vice President and General Manager, asking for information including the profit sharing rules, terms, and calculations for bargaining unit employees, a list of those eligible and ineligible, and similar information on the Respondent's 401k plan.

7. Drews provided the requested information and provided additional information to a second Union request made later that same week.

8. On September 12, 2019, Respondent withdrew its proposal to substitute its profit sharing plan for pensions.

9. The same day, the Union filed a grievance alleging the Respondent did not treat union bargaining unit members and non-union bargaining unit members fairly because Respondent offered profit sharing to non-Union dues-paying bargaining members only.

10. One issue in the arbitration proceeding was whether or not the Respondent violated the Collective Bargaining Agreement by paying profit sharing to non-Union dues-paying bargaining unit employees but not to bargaining unit Union-member employees and/or failing to

provide certain information about past profit sharing to the Union to calculate damages to Union members.

11. The arbitrator issued his award on March 13, 2020.

12. Through the General Counsel, the Union maintained it was unaware of how non-dues paying bargaining unit employees. However, this newly discovered evidence establishes otherwise.

13. The Respondent seeks to introduce additional evidence of this arbitration award, which further illustrates the Union had actual and constructive notice that non-dues paying bargaining unit employees were eligible to participate in Respondent's profit sharing plan. The arbitration award is attached hereto as **Exhibit A**.

14. This arbitration award demonstrates the above and is critical evidence in showing why the ALJ's decision warrants review.

15. This evidence was not introduced earlier because Respondent's counsel was recently hired and unaware this arbitration took place.

16. Had the Respondent been able to admit this arbitration award, the results of the hearing would have come out differently, as this award directly refutes the Union's position that they could not have been aware of Respondent's profit sharing plan and that employees in Respondent's bargaining unit participated in the plan as early as 2011.

17. In the past, the Board has reopened the record to admit arbitration awards to resolve ongoing collective bargaining controversies. See *Natl. Union of Hosp. Employees, Union*, 273 NLRB 1458 (1985).

18. These are extraordinary circumstances by which to reopen the record and consider such evidence.

19. In *Agar Supply Co., Inc.*, 338 NLRB 506, 1130 (2002), the Board granted the employer's motion to reopen the record to admit new evidence clarifying its position that an employee was not a member of the bargaining unit at the time of an election and therefore ineligible to vote, contrary to the union's position that the employee was eligible. See also *Agar Supply Co., Inc.*, 337 NLRB 1267 (2002).

20. Similar to the facts in *Agar*, this newly discovered evidence eliminates the Union's factual foundation they continue to rely on to support their false claim. In the absence of this new evidence, a legally and factually erroneous outcome would follow. The present request therefore rises to the level of an extraordinary circumstance that necessitates reopening the record.

21. In the alternative, if the Board does not agree to reopen the record to admit the arbitration award, Respondent respectfully requests the Board take administrative notice of the award.

22. In doing so, Respondent requests the Board to take notice that arbitration regarding Respondent's profit sharing plan did take place with the Union prior to this matter.

23. In addition to the arguments raised in the Respondent's Brief in Support of Exceptions, the new evidence upon which the instant Motion is based further demonstrates that the Union's position is inherently flawed.

WHEREFORE, Respondent respectfully requests that its instant Motion to Reopen the Record to Admit or in the Alternative Take Administrative Notice of an Arbitration Award be granted because the Respondent recently learned of the new evidence and because Respondent hired undersigned counsel after ALJ Ringler issued his decision.

Respectfully submitted,

DATED: April 20, 2021

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

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ATTACHMENT A

IN ARBITRATION BEFORE MICHAEL D. GORDON, NEUTRAL

IUOE LOCAL 627

and

PROFIT SHARING GRIEVANCE
FMCS No. 19-11360

CORESLAB STRUCTURES

ARBITRATOR'S DECISION AND AWARD

This grievance challenges certain profit sharing matters. It arises under a collective bargaining contract ("Agreement") between International Union of Operating Engineers Local 627, AFL-CIO ("Union") and Coreslab Structures (Tulsa) Inc. ("Company") covering production and maintenance employees at its Tulsa, Oklahoma, facility ("Plant").

A hearing was held December 17, 2019, in Tulsa, Oklahoma. George M. Miles appeared for the Union. Tony G. Puckett represented the Company. The parties received full opportunity to examine and cross-examine witnesses, to introduce relevant exhibits and to argue. The record closed with receipt of written briefs on February 14, 2020.

ISSUES

The parties are unable to stipulate the issues. The Union says they are:

1. Did the Company violate the Agreement by unilaterally paying benefits in the form of profit sharing contributions to one group of employees in the collective bargaining unit but not to others?

The Company defines the issues as:

1. Whether the grievance is timely¹;
2. Whether the Agreement requires the Company to pay profit sharing to employees in the collective bargaining unit.

After review of the entire record, the issues are framed as:

1. Is the grievance time barred in whole or in part; and, if not;
2. Did the Company violate the Agreement by (a) paying profit sharing to non-Union bargaining unit employees but not to bargaining unit Union member employees and/or (b) failing to provide certain information about past profit sharing to the Union to calculate damages to Union members, and, if so;
3. What is the appropriate remedy?

/////

¹ The Company specifically articulated the timeliness issue for the first time in its brief although the issue was mentioned somewhat peripherally at the hearing (See, TR. 71-72). The Union argued the grievance was timely in its brief.

SELECTED PORTIONS OF AGREEMENT

ARTICLE III RECOGNITION

- 3.1 The Company recognizes the Union as the sole collective bargaining agent for all production and maintenance employees located [at the Plant], excluding building maintenance employees, janitorial employees, office and clerical employees and supervisors as defined in the NLRA, as amended, and guards.

ARTICLE IV COOPERATION, STRIKES AND LOCK-OUTS

- 4.1 This Agreement is entered into to prevent strikes and lockouts, and to facilitate peaceful adjustment of grievances and disputes . . . and to prevent waste and unnecessary and avoidable delays and expenses, and so far as possible, to provide for labor continuous employment, such employment to be in accordance with the conditions herein set forth at the wages herein agreed upon.
- 4.2 It is agreed . . . that there shall be no strike by the Union, or lockout by the Company during the life of this Agreement. It is further agreed that all employees will be represented by the International Union of Operating Engineers, Local 627 and jurisdictional disputes will be nonexistent. All disputes, differences and grievances will be handled in accordance with Articles XIX and XX of this Agreement.

ARTICLE V UNION MANAGEMENT COOPERATION AND HIRING PROCEDURES

- 5.1 Cooperation is defined as "the association of a number of persons for the common benefit: collective action in the pursuit of common well-being".

With this understanding of the meaning of cooperation [the Company and Union] undertake collective action for the common benefit of the business.

In establishing the confidence that must underlie the Agreement, three fundamental principles are recognized:

- 1) The Company recognizes the right of the employees to join the Union; the Company believes that collective action in the common well-being will be most effective when the Union remains stable and responsible.
- 2) The Union recognizes the right of the Company to manage and direct the business. Further, the Union believes that collective action in the common well-being will be most effective when the employees give their full support to the Management of the Company in discharging its responsibilities including its customers' commitments.

- 3) The Company and the Union mutually recognize that in order to maintain and improve upon the level of wages provided for in this Agreement, there is a continuing need for increased productivity, better quality and more efficient operations and that each employee is responsible for each of these areas.

. . . .

ARTICLE VII
UNION VISITATION

- 7.1 It is agreed that the Business Representative of the Union will have the right to visit the plant during normal working hours, but will not unduly interfere with the operation of the plant. . . .

ARTICLE X
WAGES, OVERTIME, HOURS, ETC.

- 10.1 The rates of pay for the various classifications of work and other provisions incidental to wages are set forth in Appendix "A" attached hereto and made a part hereof. Adjustments are reflective in all Groups. Each annual raise will be effective the first Monday in May.

. . . .

ARTICLE XII-
TEMPORARY JOB TRANSFERS

- 12.1 The Company agrees to pay the rates set forth opposite each group classification. . . .

. . . .

ARTICLE XVI
PENSION

- 16.1 Management agrees to be bound by the agreement declaration of trust entered into as of September 7, 1960, establishing the Central Pension Fund of the Operating Engineers and participating employers and by an amendment to said trust agreement.

. . . .

ARTICLE XIX
GRIEVANCES AND GRIEVANCE PROCEDURES

- 19.1 Should differences arise between the Company and the Union or its members as to the interpretation and application of the terms of this Agreement, there shall be no suspensions of work because of such differences, but they shall be settled in the following manner:

1. An employee who may believe that he is aggrieved because the Agreement has been violated shall first discuss the matter with his superintendent, with or without his steward present, as he may elect, in an attempt to settle the matter at this level. The matter shall be so submitted within four (4) working days of the time that it first comes to the attention of the grievant or it shall be forfeited. The superintendent shall then give his oral answer within four (4) working days from the time that the oral grievance was discussed with him.

2. If the matter is not satisfactorily settled in Step 1, the grievance shall be reduced to writing in duplicate. One copy will be retained by the employee, and one copy will be given to the superintendent within five (5) working days of the superintendent's answer to the aggrieved employee. The superintendent will reduce his answer to writing within five (5) working days from the time of receipt of the written grievance from the aggrieved employee and give such written answer to the employee. Grievances not submitted in writing within twelve (12) days of the event which gives rise to the grievance shall be forfeited.
3. If the matter is not satisfactorily settled in Step 2, then it is agreed that a meeting will be scheduled within three (3) working days from the date of receipt of the superintendent's answer in Step 2, between Management Representatives and Union Representatives in an attempt to settle the dispute. The Company will give its answer in writing within three (3) working days following the meeting.
4. If the matter is not satisfactorily settled in Step 3, it may be appealed by the Union to arbitration for settlement.
5. The Union shall have the right to appoint shop stewards or a shop committee (not to exceed two (2) for the purpose of management-employee coordination).
6. The steward and/or shop committee members are to perform all duties assigned them by the Company. The steward and/or shop committee members are to work the same as any other production and maintenance employee in the plant but will be given a reasonable amount of time to handle grievances of the employees.

ARTICLE XX
ARBITRATION AND ARBITRATION PROCEDURES

20.1 . . .

. . . The sole function of the Arbitrator shall be to determine whether the Company or the Union is correct with reference to the proper application or interpretation of this Agreement. The arbitrator will not have the authority to add to, subtract from, or in any way modify or change any of the terms of the Agreement, nor shall he have jurisdiction or authority to consider or decide matters concerning or involving a new or different agreement or requested changes in this Agreement.

. . . It is expressly agreed and understood that such ruling and decision of said Arbitrator shall be final and binding upon all parties. . . . Any grievance not originated and handled strictly within the time and manner provided above, shall be conclusively deemed to have been waived and the disposition thereof at any step, if not appealed further within the time limits and manner prescribed therein, shall be final and binding on all parties, including individual aggrieved employee or employees and thereafter that particular grievance may not be presented whatsoever against the Company, either by the Union or by the particular aggrieved employee, under this Agreement or otherwise.

ARTICLE XXIV
SAVINGS CLAUSE

24.1 It is the intent of the parties that no provision of this Agreement shall be in conflict with any law of the United States of America, or the State of Oklahoma, or any lawful Presidential Executive Order; but if any Article, Section, Clause or provision of this Agreement shall be in conflict with, or contrary to, any such law or Presidential Executive Order, or be for any reason invalid, such conflict or invalidity shall not affect any other Article, Section, Clause or provision of this Agreement which can be given effect without such conflicting or invalid provision.

FACTS

The Plant makes concrete bridge beams. Since 2011, Neil Drews has been Company Vice President and General Manager. At relevant times, Justin Evans has been Union president and Business Agency and Mike Stark has served as Business Agent.

The Union has represented a collective bargaining unit of production and maintenance employees since sometime prior to 2004 when the Company assumed Plant ownership. The bargaining unit numbers about 25 employees. Union membership has fluctuated.

The Agreement initially was scheduled to end on April 30, 2019.² It was extended from May 1 to July 31 and then from August 1 to September 30, 2019.³

² Unless otherwise indicated, all dates refer to 2019.

³The extensions occurred, at least in part, due to an audit of Company contributions to the Article 16.01 pension fund by Pension Fund Trustees. It began sometime before April 16 and concluded on October 2 with a claim of unpaid premiums in excess of \$158,000. The merits of that audit and its conclusions are not relevant to this grievance except to put events in context.

The parties first met to negotiate a successor contract on April 10. At a subsequent July 26 bargaining session, the Company proposed to replace the existing pension plan with the Company's profit sharing program. At the third and last bargaining session on September 6, the Union rejected the proposal. The Union's only negotiators, Evans and Stark, previously were unaware that the Company had an existing profit sharing program.

In fact, the profit sharing benefits had been discussed and distributed to non-unit employees each March during annual safety meetings attended by all employees (Union, non-Union and non-unit) at least after 2011. Union stewards attended the meetings. The last such meeting was on March 15. Unit members who were not Union members got profit sharing and it was announced the payment was made because they were not Union members.

On September 10, Evans wrote Drews asking for information including profit sharing rules, terms and calculations for bargaining unit employees, a list of those eligible and ineligible and similar information on the Company 401K plan.

Much of that information was supplied within a week but on September 16, Evans sought more detailed and additional information. Additional information was provided but the Union asserts more is required.

On September 12, the Company withdrew its proposal to substitute profit sharing for pensions. The same day, Evans filed this written grievance at Step 2 with Drews. It said:

The Union's position is every employee, whether a member or not, must be treated equally and fairly. [The Union] believes the company is in clear violation of Articles 3, 4, 5, 7 and Article 16 and any other Articles that may apply. [The Union] demands every employee within the bargaining unit be made whole with both Pension and Profit Sharing, according to applicable laws. The Union further demands the company to cease any and all other coercion tactics used to negate the mutual harmonious relationship the Union and the Company should have.

Drews answered on September 19. He said the grievance had been filed at the wrong step and was untimely. He also stated that the grievance concerned a subject outside the Agreement, contrary to Agreement §19.1, and was unrelated to any of the contract provisions cited in the grievance.

On September 19, the Union filed an Unfair Labor Practice ("ULP") charge alleging violations of §8(a)(1), (3) and (5) of the National Labor Relations Act ("NLRA"). The basis of the

charge claimed:

1. During the six months, the Employer has interfered with, restrained, and coerced its employees . . . by offering profit sharing to bargaining unit employees who chose not to become members of the Union in order to discourage union membership or union activities in violation of Section 8(a)(1) and (3) of the Act.

2. Since about April 2019, the Employer has failed to bargain collectively and in good faith with [the Union], by making unilateral changes to benefits and further has engaged in bad faith and regressive bargaining for a successor collective bargaining agreement in violation of Section 8(a)(5) of the Act.

3. During the past six months, the Employer has interfered with, and restrained its employees in the exercise of rights protected by Section 7 or the Act by unlawfully restricting Union access to employees in violation of Section 8(a)(1) of the Act.

4. Since about September 16, 2019, the Employer has failed and refused to provide to the Union relevant and necessary information it has requested in violation of Section 8(a)(5) of the Act.⁴

On September 24, the Company wrote the Union referencing a disaffectation statement it received on September 11 signed by 18 of 26 unit employees saying they no longer wanted the Union to represent them. It also withdrew its recognition of the Union as employee representative after the Agreement expired on September 30.

⁴ The NLRB's Subregion 17 has not determined whether the charges are valid and has not acted on the statement of employee disaffectation. Other ULP's may be pending but they are not clearly reflected in the record.

UNION POSITION

The Company acted unlawfully by paying profit sharing only to non-Union members of the bargaining unit and, also, by withholding information to calculate resulting damages to Union members. The Company should be required (a) pay past profit sharing to Union members; and, (b) to provide necessary information to calculate the profit sharing due them.

The grievance is timely. On September 9 Union officers asked for information about profit sharing, a wage payment which first had been mentioned to them on September 6 to be presented at the September 12 bargaining session. On September 12, the Company withdrew its offer to substitute profit sharing for pensions and declined to pay bargaining unit Union members past profit sharing amounts.

Accordingly, the September 12 grievance was timely since Union leadership was unaware of the profit sharing plan until the Company mentioned it during bargaining. The Company did not defend the grievance on the basis it was untimely or submitted to the wrong Company representative.

A general presumption of arbitrability disfavors denial of a grievance on technical grounds. Here, the Agreement's grievance clause is broad and the grievance involves

interpretation of the Agreement. The grievance raises broad, unit-wide claims that go beyond individual employees and that can not be resolved at preliminary grievance steps.

The Agreement covers all bargaining unit employees, Union and non-Union alike. The Company's Union/non-Union distinction about wages is a per se violation of 29 U.S.C. §158(a) (1) and, therefore, Agreement Article 24.1. The Company illegally paid profit sharing only to non-Union employees since 2006. The Company did not recognize its obligation until after the pension audit.

Since profit sharing is not mentioned in the Agreement, the Company also violated Article 12.1's wage provisions. As the NLRB has recognized, the type distinction made by the Company is inherently discriminatory and impermissible under NLRA §8(a) (1) .

The remedy should require the Company to provide information necessary to calculate the past profit sharing amounts due Union members of the bargaining unit. And, the Arbitrator should retain jurisdiction until the parties are in the position that would have existed absent the Company's violations.

COMPANY POSITION

This grievance is untimely, unsupported by contract language and bound by issues the Union submitted to the NLRB. It should be denied.

The grievance is untimely. It does not comply with Article §19.1's specific four day time limit which precludes a continuing violation. Profit sharing checks have been issued every March since 2011 at meetings attended by Union members, Union stewards and non-Union employees. Supervision announced profit sharing checks were being paid some employees because the recipients were not Union members. The absence of any grievance within four working days of the March 2019 distribution results in forfeiture of all claims. Forfeiture clauses for untimely filing are routinely enforced by arbitrators. Article §20.1 requires it be applied here.

Moreover, the Agreement is completely silent regarding profit sharing. The Union can not satisfy its burden of proving a violation of clear, unambiguous contractual language. The Agreement's silence shows there was no meeting of the minds or mutual intent to provide profit sharing to all unit members. Indeed, the Union's rejection of the Company's

offer of profit sharing offer highlights its absence from the Agreement.

The grievance relies on equality and fairness which are concepts beyond an arbitrator's authority and contrary to the prohibition against dispensing the arbitrator's own brand of industrial justice. In any event, Drews thought his actions were fair to non-Union employees who received no pension contributions.

In addition, the grievance is invalid as the result of a lengthy past practice. A past practice exists because profit sharing distribution to non-Union bargaining unit employees has existed since 2011 and was done openly to everyone in the bargaining unit without complaint.

Lastly, the dispute should defer to the current and unresolved ULP the Union filed with the NLRB. That charge includes the same profit sharing claims it makes in this grievance. The NLRB has not deferred the ULP charge to arbitration. It will issue its decision no matter the outcome of any arbitration. Arbitrators should not invoke public laws or decide ULP issues; and, they can not act in place of, or finally bind, the NLRB.

DECISION

The Union shoulders the burden of proving a violation of the Agreement and its requested remedy. This grievance has more than its share of twists and turns resulting from peculiar facts regarding the Union's current status and the absence of any existing agreement.

Time limits are important. When they specifically provide for forfeiture if unmet, they must be literally enforced no matter how harsh the consequences. But, forfeiture language must be express and unmistakable. Without unambiguous forfeiture language, contractual time limits are in the nature of statutes of limitations, subject to tolling for compelling equitable reasons.

Article 19.1 describes differentiates between the Company and the Union and its members⁵ about the Agreement's meaning. The difference between individual employee grievances and Union originated grievances is highlighted in Article 20.1's distinction between employee and Union grievances.

⁵ "Members" is best understood to mean all bargaining unit employees because federal law obliges an exclusive union to represent all employees, union and non-union. This reading is consistent with repeated references to "employee" throughout Article 19.1.

Article 19.1 and Article 19.2 speak only of disagreements from individual employees. No mention is made of class-wide, mass grievances from the Union. In fact, the Union is not mentioned until Article 19.1(3). And, Article 19.1 (3) - (6) do not contain express forfeiture language for class-wide Company/Union disputes.

Accordingly, this grievance's forfeiture is not mandated by the Agreement's unambiguous language because it is silent about Union class complaints. Timeliness here turns on equitable considerations similar to laches and estoppel. On this record, the grievance is untimely to the extent it seeks a remedy or relief for any conduct before the day it was filed, September 12. Even assuming (1) a steward may not be expected to know the issues raised here and (2) current Union leadership did not have actual knowledge of profit sharing until Spring 2019, the Union should have known the practice long before its grievance. Management's public statements at yearly safety meetings, bargaining for prior contracts, decreases in Union membership and Article 7.1 access to visit the Plant, create a presumption of Union knowledge that precludes any pre-grievance remedies.

It does not foreclose a future remedy. The Company continues to assert a right to treat non-Union bargaining unit members differently from Union members. What happened in the past does not excuse similar future misconduct. Profit sharing eligibility based on non-union membership is not controlled by binding past practice because it is not a production method or a legitimate exercise of management rights. It is - or at least always has been - a direct violation of the NLRA, a federal law prohibiting such distinctions.

Perhaps more importantly for arbitration purposes, a distinction between profit sharing between Union and non-Union employees breaches the Agreement. It is irrelevant the Agreement does not include specific profit sharing language.

The Agreement prohibited future pay distinctions between Union and non-Union members of the bargaining unit. Article 3.1 and Article 4.1 recognize the Union as sole bargaining agent. Article 5.1 speaks of labor/management cooperation and collective action. Article 10.1 says that wages for the unit are contained in Appendix A. And, Article 12.1 requires Company payment of contractual wage rates. Article 24.1 states an intent that the Agreement comply with federal law. Given

those promises, it is undeniable that the Agreement is broken by any non-negotiated and unilaterally imposed profit sharing payment to any bargaining unit member. The actual intent of Company officials who authorized the payments is irrelevant since the conduct inherently breaches the Agreement and goes to the heart of the parties' relationship.

The unique and difficult aspect of this grievance is the remedy. There is no existing collective bargaining contract. There may not be enough Union members to sustain the Union's status as exclusive collective bargaining representative. Those matters, and perhaps others, now are before the NLRB. The NLRB is the best, and probably only, forum to resolve these issues. It has a full arsenal to remedy past misconduct. Therefore, any remedy ordered in this arbitration is subject to the NLRB finding in the Union's favor on the relevant issues.

Accordingly, the remedy is prospective only; and, it is conditioned on a determination that the Union continues as exclusive collective bargaining representative of unit employees. The remedy does not include the Union's request for past profit sharing information prior to 2019. Ironically, if

such information is appropriate it likely will be ordered in any NLRB order. If the NLRB is silent, the information is irrelevant under this decision because the Union's claims for pre-September 2019 premium pay to its members is time barred by this decision. Plus, there is a substantial question whether the Agreement justifies prior payments to Union members or simply injunctive relief to cease the practice.

AWARD⁶

1. The grievance is timely on and after September 12 until September 30, 2019.
2. The Company violated the Agreement by paying profit sharing to non-Union bargaining unit employees but not to Union bargaining unit employees;
3. If an NLRB order or settlement results in the Union continuing its status as exclusive collective bargaining representative of the Plant's production and maintenance employees, the Company shall not pay bargaining unit employees profit sharing without the Union's express written approval.
4. If the Union retains its status as exclusive collective bargaining representative of production and maintenance employees and, if either party proposes profit sharing be added to a successor bargaining agreement, the Company shall provide the Union relevant and necessary information related to the calculation and distribution of profit sharing information at least from March 2019.

⁶ The Union's grievance can be read narrowly only to request preservation of past profit sharing records for future use. However, the answer to whether such relief is due, requires analysis of the underlying contractual claim that the substance of the grievance has merit.

5. The Arbitrator shall retain jurisdiction for sixty calendar days from the date of a settlement or final NLRB decision, or for such longer time mutually agreeable to the parties, for the sole and exclusive purpose of resolving questions, if any, arising from the remedy described above. Jurisdiction shall continue until the remedial question is resolved if either party invokes the Arbitrator's retained jurisdiction during such sixty day or extended period.

March 13, 2020

Date

A handwritten signature in black ink, appearing to read "Michael D. Gordon", written over a horizontal line.

MICHAEL D. GORDON, ARBITRATOR

CERTIFICATE OF SERVICE

I certify that, pursuant to Section 102.114 of the Board's Rules and Regulations, on this ____ day of April, 2021, I caused a copy of CORESLAB'S MOTION TO REOPEN THE RECORD OR IN THE ALTERNATIVE TAKE JUDICIAL NOTICE OF AN ARBITRATION AWARD to be served electronically with:

Executive Secretary
National Labor Relations Board
1099 14th Street N.W.
Washington, DC 20570

and served by e-mail upon:

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